

The C A S E of *Mary Dutchess* of *Norfolk*.

UPon the Marriage of the *Dutchess* with the now *Duke* of *Norfolk*, in the year 1677, her Father the late *Earl* of *Peterborough*, paid as part of her Portion 10000*l.* and Setled on that Marriage Lands of near 1000*l.* per annum, the Remainder of which on Failure of Issue was limited to the now *Duke* and his Heirs for ever; and the *Earl* after his and his Lady's death secured to the *Duke* the Furniture of *Drayton* worth 10000*l.* more, and the *Duke* receiv'd also by Agreement 1000*l.* per annum for Twenty years out of the *Earls* Estate; besides very rich Jewels, Plate, and other things of great value, which the *Dutchess* brought with her into the *Duke's* Family: And great Debts having been contracted, for the support of the *Duke's* Honour and his Service while he cohabited with the *Dutchess*, she hath since his Separation from her paid them out of her own Estate.

That by the evil and malicious insinuations of the *Dutchess's* enemies, the *Duke* was prevailed on, to carry her then a Protestant into *France*, and to put her into a Monastery (where she could not be admitted without changing her Religion) and left her there on great assurances of sending for her home in a short time, and so parted with great expressions of Kindness.

That a considerable time after by the *Dukes* consent, she returned into *England*, and lived retiredly at *Drayton* in *Northamptonshire*, and at the time of the Revolution she again retired to *France*, where she continued till she heard of her Father's Imprisonment in the *Tower*, and then came back to *England* and lived privately till her Father obtained his Liberty, when she came home to him.

That the 8th of *January* 1691 the *Duke* was prevailed on by the instigation of her Enemies, to exhibit a Bill in the House of Peers, to the same effect with the Bill now depending, and diverse Witnesses were examined on both sides, after which and a long solemn debate and due consideration had by their Lordships of the Witnesses, and what was Sworn by them, the 17th of *February*, they were pleased to reject the Bill without a second reading.

Notwithstanding which the *Duke* was again prevailed on the 22th *December* 1692 to exhibit a Second Bill in the House of Peers, to the same effect with his First, which after several debates was the 2d of *January* following again rejected.

Sometime after this, and for accomodating all differences between them, Proposals were made to the *Dutchess*, which after long agitation on 28th *April* 1694 were reduced into Writing, and executed by the *Duke* and *Dutchess*: The preamble of which Articles is in the words following. *Whereas diverse Controversies, Debates, Demands, and Suites of several natures have for some time since been agitated, and continued between the said Duke and the said Dutchess his Wife, &c. unto all which it is at last held fitting (it being conduceable to their respective quietts and ease) to have an end put, and the like for the future prevented. It is therefore hereby and by the Parties to these presents, declared and agreed in manner following; Whereby the Dutchess convey'd to the Duke's use the Mannor of Castle Ryssing &c. And also the said Dutchess and her Trustees, Assigned their Interest in a Considerable Part of the Mannor of Sheffield in Yorkshire to the use of the said Duke. So that by these Articles and that Deed Executed thereupon, the Duke had his then desired Advantages.*

That after the execution of these Articles, the *Dutchess* sent for one Mr. *Negus* the *Dukes* principal Gentleman, and expressed her self very sensibly of the misfortunes of the *Duke* and her self, and desired Mr. *Negus* to tell the *Duke*, that she would avoid all Company that should give him any offence, and that she would not so much as pay a Visit, but where he liked; which Mr. *Negus* lately testified before the Lords, and that he acquainted the *Duke* with it, as also that she had several times told him, if she Dyed first, she would leave the *Duke* her Estate.

standing the said Agreements, whereby the Duke and Dutchess agreed to live Separately, yet without his signifying any Dissatisfaction to or with the Dutchess, and without any manner of Notice, or previous proceeding in the common and ordinary Course of Justice, but by taking from her that Legal Tryal in the Ecclesiastical Court, which by the Laws of this Realm she is intituled unto, he did on the 16th. day of February last exhibit in the House of Peers the Bill now depending for Dissolving the Dukes Marriage with the Dutchess, and for enabling him too Marry again. Upon which the proceedings were so very quick, two Foreigners (a French Footman and a Dutch Cook-maid) lately brought from beyond Sea being forthwith examined against her, charging her with Facts supposed to be committed many Years since, and long before the date of the said Agreements, and on which the two former Bills were founded, that it was impossible for her to make her Defence as she might have done, if the proceedings had been against her according to the known Laws of this Land.

The Dutchess thought her self under a necessity of complying with all the Orders of the House of Peers, and accordingly as well as she could, made her Defence, tho' less than a weeks time was allowed her for doing it, and upon Examining the Evidence of the Dukes Witnesses, many contradictions appeared, some whereof follow, as doth appear by the depositions taken in Writing, and now remaining in the House of Peers.

For *Hosieur* the Footman Swears the Dutchess was at the *Cock-Pit*, when and before, he came to Live with *Sr. John Jermaine* and that he continued there Fifteen days after, and that after the Dutchess left the *Cock-Pit* she went to *Fox-hall*.

Vannas the Cook-maid Swears *Hosieur* came to *Sir. John* when the Dutchess was at *Fox-Hall*.

Hosieur Swears that 8th. Feb. 92 he left *Sir John's* service, when the Tryal was between the Duke and Dutchess in Parliament, and after Lived privately six or eight weeks till he and *Vannas* could get for *Holland*, and arrived there in Easter following.

And yet in an other place he Swore he desired leave to go, and afterwards that he also went for *Holland* as soon as the Wind was fair.

But Note all the Evidence was closed and ordered to be summed up, the 9th. of February, so that he needed not afterwards to have gone. And whereas he insinuates that he and *Vannas* were Secreted and kept from being Witnesses.

Note it doth no where appear, that either he or *Vannas* were ever thought on for Witnesses.

Hosieur Swears he returned again to *Sir John* in Summer 92 being often sent to by *Sir John*.

Whereas *Bayly* an other of the Dukes Witnesses swears, he did not return again to *Sir John* in two years after he went away; *Bayly* the Witness being all that time and three years before a Servant in the House.

Note also that this very Summer 92, to wit in *Easter-Term*, the Duke brought his Action against *Sir John*, which was tryed *Michaelmas-Term* 92, at which time it had been more likely, if *Sir John* had believed he could have done him any harm, he should have kept him in *Holland*, rather then have sent for him over, especially considering that this fellow afterwards Swears, *Sir John* Swore in a rage this fellow would betray him.

Hosieur being asked who sent for *Vannas* over.

He answered that after he had promised the Duke and Lord *Howard* to speak the truth of what he knew, they desired him if he met *Vannas* to desire her to come over, and speak the truth of what she knew.

And being asked how long after he met *Vannas*. Answered about 12 months since.

And being asked when was the first time he spoke to her, about her coming over to speak the truth. Answered, 'tis about a year since.

And being asked how long it was since they resolved to come over. Answered, 12 months.

Vannas being asked whether she was not sent for from *Holland* to be a Witness,

Answered, she knew nothing of it, till eight or nine weeks ago.

Vannas Swears she was sent away on account of the Tryal.

Whereas *Peacock*, *Hawkesworth* and *Knight*, three Servants of the *Dutchess*, Swore the *Dutchess* turn'd her away before the Tryal, for keeping company with *Dutch* Souldiers, and they do Swear a new Cook-maid there before the Tryal.

Hoffieur Swears he had a Key of the door going into the *Park*, and could come in when he would,

And yet owns, he knew but two of the Servants, one whereof is long since dead;

And also the *Dutchesses* Servants, Swear they never heard any body had a Key, and that if any Key had been, they must have known of it; they also prove the Shutting up, Bolting and Chaining the door every night, and Opening it every morning, and but one of the Servants remembers ever to have seen him at the Door, and then he rung the Bell, but came only to see a Country woman of his, and to carry Letters to *Holland*, and brought answer back to her, but was not admitted beyond the passage.

Hoffieur and *Vannas* Swear they saw the *Dutchess* and Sir *John* in Bed together at *Mill-bank*;

The *Dutchesses* woman Swore she has put the *Dutchess* to Bed, and taken her up every night and morning several years, and never saw him in the House. And two others Swear they were constantly in waiting night and morning, and positively deny any knowledge of any such thing, and say they never saw *Huffieur* there, and that *Vannas* was never admitted up stairs, she was so dirty a creature; much less to Dress or Undress the *Dutchess* as she Pretended often to have done.

Vannas Swears she could not tell the places she has been at these six weeks last past. Whereas

Mr. *May*, and two other of the *Dukes* servants, Swear she has been fourteen days in the *Dukes* own house, with the full Liberty of the house.

Vannas being asked whether she ever told any body of the occasion of her going away, she Swore yes, she told it to a great many in *Holland*, and not here.

Yet being afterwards asked whether she ever discovered that she was sent out of the way, she Swore directly no.

These are some of the many and plain Contradictions and Disproofs of these Evidences; besides the great improbability in their own nature, in several things Sworn.

But it is also to be noted, that *Huffieur* left Sir *John's* service in a disgust, and so it is proved by *Bayly* another of the *Dukes* Witnesses, and that what *Huffieur* Swore, could be nothing but Spight and Malice. Yea it is proved on the *Dutchesses* part, that he Swore he would find a way to be revenged of him, and that perhaps it might not be long first; and Mr. *Strange*, Mrs. *Pitts* and her two Maids, who could have deposed very materially for the *Dutchess* refused to appear, tho' often Summoned; being persons not in the *Dutchesses* Interest or Power.

This *Hoffieur* has been out of place ever since he left Sir *John's* service April 96. and is so still as he Swears. And so in consequence likely to be necessitous.

Note also that *Hoffieur* Swears Sir *John* gave him seven Guineas to pay the charges of himself, *Vannas* and an other, which were ordered to be kept private, till they could be Shipp'd off, and also for their passage into *Holland*, which was in time from the 8 Feb. 92. till Easter.

Which does not look like a bribe for a secret of this nature, being hardly sufficient to maintain three People, and pay their Lodgings for two Months.

Huffieur would be thought a mighty Confident, so as to have a Key to the *Dutchesses* house, to come in, and go out, when he pleased; and yet as well acquainted as he pretended to be with the house, and the *Dutchesses* Bed-chamber, he could not tell on what Floor it was, nor what Furniture it had; nor whether Wainscotted or Hanged. And when he was asked, which way the Windows of the Bed-chamber looked, he trifled in that Question, and concluded he could see the Water, but was affraid to go near the Window for fear of being discovered, and yet had no scruple of coming into the house with his Key at any time.

m35.10.6686

Things being observed it must be considered, that the Facts now in effect charged against the Dutchess, are suggested to be done many years since, and were debated and considered before the Peers, before the rejection of the two first Bills, and long before the Agreement for putting an end to all Controversies and Debates. Now 'tis very hard to put the Dutchess to account again, for those very Facts, considering that after eight or nine years, many People are dead, others dispersed, and not in a little time to be found out, and circumstances of times and places (which in the nature of all these Cases is almost all that is left to discover a Falsity) forgot.

The Dutchess is also under the unavoidable necessity of proving a Negative against down right Swearing, and that without any matter Introductory, and also by two mean Servants, the one turned out of her Place for keeping company with Foot Souldiers, and the other leaving his Place in disgust, because he could not have the Play Money.

Masters are already too much in the power of their Servants, and if they charge their Masters with Adultery, Felony and even Treason, it is not easily in the power of the Master to defend himself against down right Swearing; Servants having those opportunities of the knowledge of times and places and Company, which cannot be denied or avoided, and which others have not, whereupon they may frame and build false Evidence, and many times are of ill Principles and desperate Fortunes, and of tempers very Revengeful, so that whoever turns away a Servant, he is in his power for his Estate, Honour and even Life it self. And therefore for the safety and freedom of Families in other Countrys, they are not permitted to be Evidence against their Masters, in any matter criminal whatsoever.

Note also the Dutchess thinks, She as an English Subject has by *Magna Carta* the same right to a Tryal in the Legal and ordinary way of Justice, as the rest of the Kings Subjects, especially considering that there never yet was in England one Precedent, of a Bill exhibited in Parliament to dissolve a Marriage at the first instance, without any previous proceedings in the Ecclesiastical Courts; (which in these Cases is the Law of the Land) and not above Five or Six Bills, in above 600 years ever passed to dissolve Marriages, or make Second Marriages good, even after there had been a divorce in the Spiritual Courts, and those Bills too in Cases generally where the Husbands were without any recrimination.

No Impediment appears why the Duke should not have endeavoured a Divorce at Law, before he had attempted a Bill to dissolve the Marriage. For any Application to the Legislature, for Tryal of matters of Private right, is improper, because there are proper Judicatures, that give that remedy the Law allows.

To ask any thing of the Legislature, in private Causes between Party and Party, beyond what the known Laws in force give, seems to be improper, because,

1. It is to make a Law in one persons Case, which is not the Law in others.
2. It is to retrospect actions, and after the Fact to Augment or alter the Penalty. Our Laws are certain, and known, that persons may conform their actions to them.
3. The Courts and Forms of Law are equally the Subjects right with the Law, and the application to the Legislature, takes away all that right of Form and Charging, whereas a certainty in time to Answer, and exceptions to Witneses, and other Legal defences of the Fact, cannot be denied the meanest Subject.

The consequence that short and summary ways of proceedings, may have on the Settlements of Estates and Families, may be very dangerous, and though the Duke of Norfolk's Bill passed the House of Peers, yet a great number of the Peers both Spiritual and Temporal entred their Protest against its Passing, and their reasons for it.

It ought to be no prejudice to the Dutchess, that the next Heir presumptive to the Duke, doth not as yet appear to be a Protestant, because when a Bill which hath lately passed both Houses is become a Law, it is not likely that Noble Family will be without a Protestant at the head of it.

If any of the Witneses formerly examined on the Bill in 1691, be now again produced, it is humbly apprehended, that as the validity of their testimony they then gave was totally overthrown, by a great number of Witneses, so it will be again so under the disadvantage of the great distance of time.

KD 764

A2

1700

LL RBR: IL
TRIALS.

41-39621